IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.1451 OF 2005

M/s.Ajit Engineering Works ..Petitioner

Vs.

Mr.Babu Samual ..Respondent

....

Mr.Shailesh Shah for Petitioner
Mr.M.V.Limaye for Respondent

....

CORAM : B.H.MARLAPALLE,J.

DATE : MAY 2,2005

P.C.:

1. Heard Mr.Shah, the learned counsel for the Petitioner who was Plaintiff in Special Civil Suit No. 348 of 2000 in which decree of eviction has been sought.

2. This Court while disposing W.P.No. 7928 of 2002 by its order dated 29.9.2003 expedited the trial of the suit and the trial Court was to decide it on or before 31.3.2004.

3. On 16.3.2004 an application at Exh.117 for striking of defence was moved by the Plaintiff and the said application has been rejected by the trial Court on 25.8.2004. Hence, this petition.

4. The Petitioner-company admits that the Respondent has kept a deposit of Rs.7 lakhs whereas the Respondent's case is that he has given an amount of Rs.17 lakhs to the present Petitioner by way of fixed deposits and he has therefore, filed Special Civil Suit No. 230 of 2000 for recovery of the deposit amount. Be that as it may, the fact remains that even as per the present petitioner, the deposit amount is about Rs.7 lakhs and if the tenant is in arrears or he has not followed the orders passed by this Court for remitting the rental amount before the trial court, the said amount could have been adjusted against the deposit amount while decreeing the suit. Once this Court had expedited the suit and made the trial time bound, it was not expected of the plaintiff to move for interlocutory orders and that too when the deadline was approaching so close.

5. Under the circumstances, without expressing any opinion on the merits and de-merits of the impugned order, this petition is disposed of with liberty to the Petitioner to seek for adjustment of the rental arrears from the deposit amount and pray to the Court below for appropriate orders in this regard while the suit is being decided.

6. The Petition is disposed of.

[B.H.MARLAPALLE,J.]